

REMARKS

This Reply is responsive to the final Office Action¹ dated June 7, 2010. Claims 1, 3, 5-10, 13-18, 22-32 and 34-36 were presented for examination and were rejected. Claims 2, 4, 11, 12, 19-21, and 33 were previously canceled. Claims 1, 10, 18, 28, 34 and 35 are independent claims. No claims are amended, added, or canceled by way of this Reply. Claims 1, 3, 5-10, 13-18, 22-32 and 34-36 are pending.

The Rejections:

Claims 1, 3, 5, 9, 28, 30-32, and 35 are rejected under 35 U.S.C. §103(a) as being un-patentable over Farris et al., U.S. Patent No. 5,751,789 (referred to hereinafter as "Farris") in view of Gerszberg et al., U.S. Patent No. 6,714,534 (referred to hereinafter as "Gerszberg").

Claim 6 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and well known Prior Art (MPEP 2144.05).

Claim 7 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in view of Gerszberg, and Ehreth U.S. Patent No. 6,246,750 B1 (referred to hereinafter as "Ehreth").

Claim 8 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and McKenna et al. U.S. Patent No. 6,829,486 B2 (referred to hereinafter as "McKenna").

¹ The Office Action may contain a number of statements characterizing the cited references and/or the claims which Applicant may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

Claims 10, 17, 18 and 23-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina et al., U.S. 2004/0214569 A1 (referred to hereinafter as “Cardina”) in view of Gerszberg.

Claims 14-16 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Gerszberg and Sawada, U.S. 2005/0148315 A1 (referred to hereinafter as “Sawada”).

Claim 27 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Gerszberg and McKenna.

Claim 29 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and Patron et al., (U.S. 2005/0063333 A1) (referred to hereinafter as “Patron”).

Claims 13 and 22 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Gerszberg and further in view of well known prior art (MPEP 2144.05).

Claim 34 is rejected under 35 U.S.C. §103(a) as being un-patentable over Knight in view of Gerszberg.

Claim 36 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and Cheng et al., U.S. 2002/0187746 (referred to hereinafter as “Cheng”).

Applicant respectfully traverses these rejections, at least because the cited references taken individually or in any reasonable combination do not disclose or suggest all claim limitations of each pending claim for at least the following reasons.

I. Independent Claim 1:

“...wireless transceiver that has lost connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber ...”

Claim 1 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Farris in view of Gerszberg. Neither Farris nor Gerszberg taken individually or in any reasonable combination disclose or suggest “wherein the wireless transceiver is configured to relay data from another *wireless transceiver that has lost connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber* associated with said another wireless transceiver, said another wireless transceiver being connected to said wireless transceiver through no more than one other wireless transceiver that has also lost connectivity to the wireline network when said data is being relayed, said another and said other wireless transceivers having been wireline-connected to the wireline network during normal operation” as recited in claim 1.² (Emphasis added)

In Applicant’s last response filed on April 7, 2010, Applicant explained in detail why Gerszberg does not disclose or suggest this limitation of claim 1. Applicant hereby incorporates herein by reference all discussion of Gerszberg presented in its Remarks filed on April 7, 2010. In summary, Gerszberg teaches that a particular communication path from transceiver 2502 through transceiver 2503 to transceiver 2501 can take place when Gerszberg’s direct link 2506 is not working and only if a failure occurred at tap 60, or upstream thereof such as, e.g., between tap 60 and node 61. Accordingly, Gerszberg does not disclose or suggest a wireless transceiver “configured to relay data from another wireless transceiver that has lost connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber associated with said another wireless transceiver...” (claim 1, emphasis added). Rather, in

² Claim 1 reads on Applicant’s Fig. 8 which shows three wireless subscribers or three network interface units (NIU’s) identified as B, C and D. The wireless transceiver for subscriber B (right-hand side of Fig.) is the recited “wireless transceiver.” The wireless transceiver for subscriber D (left-hand side of Fig.) is the recited “another wireless transceiver.” The wireless transceiver for subscriber C (center of Fig.) is the recited “no more than one other wireless transceiver.”

Gerszberg, the lost connectivity is due to a problem upstream from a residence or place of business of a network subscriber, and not due to a problem in that residence or place of business.

The Office Action, in its Response to Arguments, pg 2, does not refute the foregoing argument with respect to Gerszberg as presented in Applicant's last response. Instead, it attempts to interpret Farris to allegedly read on a "...wireless transceiver that has lost connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber..." as recited in claim 1. (emphasis added) But, Farris also fails in this regard because it teaches no more than lost connectivity to a wireline network due to a fault that occurs in the network at a location other than in the subscriber's premises.

The Office Action contends that Farris teaches "the use of a wireless backup to connect a subscriber to the landline network when the landline service at the subscriber premises (i.e., residence) is interrupted (see abstract; col. 4, lines 56-61)." (Office Action, pg 2, emphasis added) But, "at the subscriber premises" is not what this cited section in Farris actually says, as discussed below. Furthermore, an interruption of "landline service at the subscriber premises (i.e. residence)" as stated in the Office Action, pg 2, is not "...lost connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber" as recited in Applicant's claim 1. Rather, in Farris, interruption of landline service at the subscriber's premises is due to a failure in the network at a location other than in the subscriber's premises.

The cited Farris Abstract merely mentions customer premises and connections to the customer premises and is otherwise irrelevant to "...lost connectivity to the wireline network due to a problem in a residence..." as recited in claim 1 (emphasis added). The other cited Farris section actually says:

"In accord with the present invention, when landline service to the subscriber premises 15 is interrupted, the SNID 19 will register with the MTSO 27 as a roaming cellular station,

and the MTSO 27 and the base station 29 will provide cellular telephone service through the SNID 19 to the customer premises telephone equipment 23.”

(Farris, col. 4, lines 56-61; emphasis added) This section discusses what happens when landline service to the subscriber premises is interrupted, and does not mention anything about interruption of service because of a problem in the subscriber premises. Interruption of landline service to the subscriber premises is not equivalent to lost connectivity due to a problem in the subscriber premises. Rather, interruption of landline service to subscriber premises results from a fault in the telephone line delivering communication to the premises. Furthermore, there is no discussion anywhere else in Farris about interruption of service because of a problem in the subscriber premises.

The MPEP requires that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” MPEP § 2143.03 quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) (emphasis added). Therefore, the word “in” appearing in the recited phrase “in the subscriber premises” must be considered.

In sum, Gerszberg does not disclose or suggest a “wireless transceiver that has lost connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber” as recited in claim 1 (emphasis added) for reasons given above including the incorporated by reference reasons. Farris also does not disclose or suggest a “wireless transceiver that has lost connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber” as recited in claim 1 (emphasis added) for reasons given above. Thus, it logically follows that any reasonable combination of Gerszberg and Farris also does not disclose or suggest a “wireless transceiver that has lost connectivity to the wireline

network due to a problem in a residence or place of business of a network subscriber” as recited in claim 1 (emphasis added).

Therefore, the 35 U.S.C. §103(a) rejection of claim 1 should be withdrawn and the claim allowed.

II. Independent Claim 10:

“when the wireline connection fails due to a problem inside said premises of said network subscriber”

Claim 10 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Cardina in view of Gerszberg. Claim 10 also reads on Applicant’s Fig. 8. Claim 10 recites, *inter alia*:

“when the wireline connection fails due to a problem *inside* said premises of said network subscriber, automatically establishing a substitute wireline connection to the network service provider over a over a wireless connection relayed from the network subscriber through more than one other network subscriber, one said more than one other network subscriber having separate normal wireline-connectivity to the network service provider, said automatically establishing including: (a) providing wireless-connectivity directly between a first transceiver associated with said network subscriber and a second transceiver associated with a network subscriber other than said one said more than one other network subscriber, and (b) providing wireless connectivity directly between said second transceiver and a third transceiver associated with said one said more than one other network subscriber” (claim 10, emphasis added)

Cardina does not disclose or suggest “when the wireline connection fails due to a problem *inside* said premises of said network subscriber...” as recited in claim 10. The Office Action cites Cardina’s abstract and paragraph [0058] against this limitation. (Office Action, pg 14) But, these citations refer to detection of interruptions in Cardina’s landline connection 101 outside of the subscriber’s premises, which is not inside the premises. Thus, Cardina does not disclose or suggest: “when the wireline connection fails due to a problem *inside* said premises of said network subscriber...” as recited in claim 10.

The Examiner alleges that Gerszberg teaches subject matter to compensate for the admitted deficiencies of Cardina by citing Gerszberg, Fig. 25; abstract; col. 20, lines 53-59; col. 33, lines 34-col. 34, lines 1-24 (Office Action, pg 15) which are the same cites provided to support rejection of claim 1. Applicant incorporates by reference the arguments made above against Gerszberg for allowability of claim 1 and submits that Gerszberg does not disclose or suggest “when the wireline connection fails due to a problem inside said premises of said network subscriber...” as recited in claim 10 for reasons that are the same as, or similar to, those reasons given for allowability of claim 1. Therefore, Cardina and Gerszberg, taken individually or in any reasonable combination, do not disclose or suggest the subject matter recited in claim 10. For at least these reasons, Applicant requests that the 35 U.S.C. § 103(a) rejection of claim 10 be withdrawn and the claim allowed.

Dependent claims 13-17, dependent from claim 10, are allowable at least for reasons based on their respective dependencies from allowable claim 10.

III. Independent Claim 18:

“said backup connectivity being provided when said wireline connectivity for said one node is lost due to a problem in said residence or said place of business”

Claim 18 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Cardina in view of Gerszberg. Claim 18 also reads on Applicant’s Fig. 8. Claim 18 recites, *inter alia*:

“providing backup network connectivity to said one node for a network subscriber having a residence or place of business, said backup connectivity being provided when said wireline connectivity for said one node is lost due to a problem *in* said residence or said place of business via a wireless network by wirelessly relaying data directly from a first transceiver in said one node to a second transceiver in another node in the plurality of network nodes which had an active wireline connection to the network service provider, said second transceiver being wirelessly connected directly to a third transceiver in yet

another node in the plurality of nodes that has an active wireline connection to the network service provider” (claim 18, emphasis added)

Cardina and Gerszberg, taken individually, or in any reasonable combination, do not disclose or suggest at least this limitation for reasons that are the same as, or similar to, those given above for allowability of claim 10. For at least these reasons, Applicant requests that the 35 U.S.C. § 103(a) rejection of claim 18 be withdrawn and the claim allowed.

Dependent claims 22-27, dependent from claim 18, are allowable at least for reasons based on their respective dependencies from allowable claim 18.

IV. Independent Claim 28:

“when connectivity on the one of the wireline connections fails due to a problem in a residence or place of business of said corresponding subscriber”

Claim 28 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Farris in view of Gerszberg. Claim 28 also reads on Applicant’s Fig. 8. Claim 28 recites, *inter alia*:

“a switch coupled to the wireless transceiver and to one of the wireline connections, the switch providing data from the one of the wireline connections to a corresponding subscriber of the network during normal operation of the one of the wireline connections and the switch providing data from the wireless transceiver to the corresponding subscriber of the network when connectivity on the one of the wireline connections fails due to a problem *in* a residence or place of business of said corresponding subscriber;” (claim 28, emphasis added)

Farris and Gerszberg, taken individually, or in any reasonable combination, do not disclose or suggest at least this limitation for reasons that are the same as, or similar to, those given above for allowability of claim 1. For at least these reasons, Applicant requests that the 35 U.S.C. § 103(a) rejection of claim 28 be withdrawn and the claim allowed.

Dependent claims 29-32 and 36, dependent from claim 28, are allowable at least for reasons based on their respective dependencies from allowable claim 28.

V. Independent Claim 34:

“when said first wireline communication fails due to a problem inside premises of said first network subscriber ”

Claim 34 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Knight in view of Gerszberg. Claim 34 also reads on Applicant’s Fig. 8. Claim 34 recites, *inter alia*:

“providing, when said first wireline communication fails due to a problem inside premises of said first network subscriber, substitute wireline communication for said first network subscriber by way of said second wireline communication by wirelessly relaying data indirectly between two nodes through a third node associated with a third network subscriber with failed wireline communication, one of said two nodes located in or on said premises of said first network subscriber and the other of said two nodes located in or on premises of said second network subscriber, said other of said two nodes relaying said data with said network service provider over a wireline otherwise normally carrying only said second wireline communication, said one node having a first transceiver, said other node having a second transceiver and said third node having a third transceiver, wherein said wirelessly relaying data includes said first transceiver wirelessly communicating directly with said third transceiver and said third transceiver wirelessly communicating directly with said second transceiver.” (claim 34, emphasis added)

Knight and Gerszberg, taken individually, or in any reasonable combination, do not disclose or suggest at least this limitation. The Office Action cites Knight, Fig. 1 and paragraph [0023] against this limitation (Office Action, pg 22) but that Figure and that section do not disclose or suggest a failure “due to a problem inside premises of said first network subscriber” as recited in claim 34. Rather, paragraph [0023] discusses cut cable 127 external to the premises, as shown in Knight Fig. 1. Gerszberg also does not disclose or suggest this limitation for reasons given above with respect to allowability of claim 1. Therefore, Knight and Gerszberg, taken individually or in any reasonable combination do not disclose or suggest at least this limitation. For at least these reasons, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claim 34 be withdrawn and the claim allowed.

VI. Independent Claim 35:

“wherein the wireless transceiver is configured to exchange said other data from another wireless transceiver that has lost wireline connectivity to the network due to a problem in a home or place of business of a network subscriber associated with said another wireless transceiver ”

Claim 35 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Farris in view of Gerszberg. Claim 35 also reads on Applicant’s Fig. 8. Claim 35 recites, *inter alia*:

“wherein the wireless transceiver is configured to exchange said other data from another wireless transceiver that has lost wireline connectivity to the network due to a problem *in* a home or place of business of a network subscriber associated with said another wireless transceiver, said another wireless transceiver being wirelessly connected directly to a third said wireless transceiver that has also lost wireline connectivity to the network, said third wireless transceiver being wirelessly connected directly to said wireless transceiver when said other data is being exchanged” (claim 35, emphasis added)

Farris and Gerszberg, taken individually, or in any reasonable combination, do not disclose or suggest at least this limitation for reasons that are the same as, or similar to, those given above for allowability of claim 1. For at least these reasons, Applicant requests that the 35 U.S.C. § 103(a) rejection of claim 35 be withdrawn and the claim allowed.

Applicant does not acquiesce in the combinability of these references. Applicant reserves its rights to present full arguments rebutting these reference-combinations in subsequent responses if need be. Applicant views its remarks as sufficient to overcome the rejections of all pending claims.³

³ As Applicant’s remarks with respect to the Examiner’s rejections are sufficient to overcome these rejections, Applicant’s silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

CONCLUSION

In view of the Remarks, reconsideration and allowance of the pending claims are respectfully requested. It is respectfully submitted that all claims and, therefore, this application are in condition for allowance and prompt passage to issue is respectfully requested.

To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to deposit account number 07-2347. Please charge any other fees due, or credit any overpayment made to that account.

Respectfully submitted,

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/Joel Wall/
Joel Wall
Attorney for Applicant
Registration No. 25,648

Eddy Valverde, Patent Paralegal
VerizonPatent Management Group
1320 North Courthouse Road, 9th Floor
Arlington, VA 22201-2909
703-351-3032
CUSTOMER NO. 25,537